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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/317,303	05/24/1999	BRUCE A. DONOHO	10745.0021US1	8945
24392	7590	04/08/2009		
FISH & ASSOCIATES, PC ROBERT D. FISH 2603 Main Street Suite 1000 Irvine, CA 92614-6232			EXAMINER PALO, FRANCIS T	
			ART UNIT 3644	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BRUCE A. DONOHO

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Appeal 2008-3180  
Application 09/317,303  
Technology Center 3600

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Decided:<sup>1</sup> April 8, 2009

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Before LINDA E. HORNER, JOHN C. KERINS, and  
STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*

DECISION ON APPEAL

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<sup>1</sup> The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

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### STATEMENT OF THE CASE

Bruce A. Donoho (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 10-18 and 20-35. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We reverse.

The Examiner rejected claims 10-12, 16-18, 20, and 22-34 under 35 U.S.C. § 103(a) as unpatentable over Richardson (GB 2 344 269 A, published June 7, 2000) in view of Shaw (US 3,282,000, issued November 1, 1966); claims 13-15 under 35 U.S.C. § 103(a) as unpatentable over Richardson, Shaw, and Burnside (US 2,777,171, issued January 15, 1957); claim 21 under 35 U.S.C. § 103(a) as unpatentable over Richardson, Shaw, and Peles (US 2,938,243, issued May 31, 1960), and claim 35 under 35 U.S.C. § 103(a) as unpatentable over Richardson and Burnside. As such, the Examiner relied in all of the rejections on the primary reference to Richardson.

We reverse because Richardson is not prior art to the Appellant's claims. The Appellant filed the present application on May 24, 1999. The Examiner has not identified any claim on appeal not supported by the Specification as originally filed. The Richardson application was not published until June 7, 2000, over a year *after* the Appellant's filing date, and it was not patented until 2003. As such, the Richardson publication does not qualify as prior art under 35 U.S.C. § 102(a) because it was not patented or published before the Appellant's 1999 filing date. The Richardson publication likewise does not qualify as prior art under 35 U.S.C. § 102(b) because it was not patented or published more than one year prior to the

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Appellant's 1999 filing date. Finally, the Richardson publication does not qualify as prior art under 35 U.S.C. § 102(e) because the Richardson publication is neither an application for patent filed in the United States, a patent granted on an application for patent filed in the United States, or an international application designating the United States. For the sake of completeness, the Richardson publication also does not qualify as prior art under 35 U.S.C. § 102(d) because it does not appear to have been filed by the Appellant or his legal representatives or assigns and is not for the same invention as claimed in the present application.<sup>2</sup>

Because all of the outstanding rejections of the claims rely upon a primary reference to Richardson, which is not prior art to the present application, we are constrained to reverse all of the rejections.

## DECISION

The decision of the Examiner to reject claims 10-18 and 20-35 is reversed.

## REVERSED

vsh

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<sup>2</sup> The Real Party-in-Interest in the present application is the sole inventor Bruce Donoho. The Richardson publication lists Kenneth Richardson as the sole inventor and Drager Environmental Supplies Ltd. of the United Kingdom as the applicant.

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